



## BUSINESS, TRANSPORTATION AND HOUSING AGENCY

### DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Director: Jay Stroh  
(916) 445-6811

The Department of Alcoholic Beverage Control (ABC) is a constitutionally-authorized state department established in 1955 (section 22 of Article XX, California Constitution). The Alcoholic Beverage Control Act, Business and Professions Code sections 23000 *et seq.*, vests the Department with the exclusive power to regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages in California. In addition, the Act vests the Department with authority, subject to certain federal laws, to regulate the importation and exportation of alcoholic beverages across state lines. ABC also has the exclusive authority to issue, deny, suspend, and revoke alcoholic beverage licenses. Approximately 73,000 retail licensees operate under this authority. ABC's regulations are codified in Divisions I and I.1, Title 4 of the California Code of Regulations (CCR). ABC's decisions are appealable to the Alcoholic Beverage Control Appeals Board. Further, ABC has the power to investigate violations of the Business and Professions Code and other criminal acts which occur on premises where alcohol is sold. Many of the disciplinary actions taken by ABC, along with other information concerning the Department, are printed in liquor industry trade publications such as the *Beverage Bulletin* and *Beverage Industry News*.

The Director of ABC is appointed by, and serves at the pleasure of, the Governor. ABC divides the state into two divisions (northern and southern) with assistant directors in charge of each division. The state is further subdivided into 21 districts, with two districts maintaining branch offices.

ABC dispenses various types of licenses. "On-sale" refers to a license to sell alcoholic beverages which will be bought and consumed on the same premises. "Off-sale" means that the licensee sells alcoholic beverages which will not be consumed on the premises. Population-based quotas determine the number of

general liquor licenses issued each year per county. No such state restrictions apply to beer and wine licenses.

### MAJOR PROJECTS

**ABC Begins Job of Rebuilding.** Due to the enactment of AB 432 (Floyd) (Chapter 900, Statutes of 1992) and AB 2858 (Floyd) (Chapter 838, Statutes of 1992), ABC expects to receive enough additional funding during fiscal year 1992-93 to rebuild its workforce to approximately the same level as it was in 1990, before budget cuts forced the Department to reduce its spending by approximately \$5 million. [12:4 CRLR 135] Among other things, AB 432—which took effect immediately as an urgency measure—imposes a \$70 surcharge on various annual fees for different categories of ABC licensees; provides that fees for various licenses issued by ABC be deposited in the Alcohol Beverage Control Fund instead of the state's general fund; and appropriates approximately \$23 million from the Alcohol Beverage Control Fund to ABC for fiscal year 1992-93. AB 2858 authorizes ABC, in its discretion, to issue an interim retail permit to an applicant for any retail license to operate the premises during the period an application for a license at the premises is pending, subject to specified conditions; provides for an interim retail permit fee of \$100, to be deposited in the Alcoholic Beverage Control Fund; and provides that all licenses, except on-sale licenses for seasonal businesses and daily on-sale licenses, shall be issued on an annual basis. This last provision authorizes ABC to stagger its license renewals on a year-round basis rather than having all licenses expire on either January 1 or July 1.

According to ABC Deputy Director Manuel Espinoza, the Department hopes to bring its staffing level from 273 to 342 by the end of the year, and to 392 by April 1993; however, Espinoza acknowledges that this timeline may be delayed somewhat depending on the number of qualified applicants. The increased staff will enable ABC to reactivate its enforcement program, which was nearly nonexistent during much of 1992. In order to operate on its decreased budget, ABC officials ceased most enforcement activities in favor of processing the backlog of liquor

license applications, instead of striking a balance between licensing and enforcement. AB 432 declares the legislature's intent that "the regulation of the sale and use of alcoholic beverages is among the highest priorities of state government. The abuse of alcohol can lead to a myriad of other criminal, legal, social, and economic problems. The fair, stable, and effective administration and enforcement of the Alcoholic Beverage Control Act and related laws, therefore, must be insured" (emphasis added).

### New License Fees Rise Significantly.

Pursuant to AB 432 (Floyd) (*see supra*), ABC is permitted to set the fee for original off-sale and on-sale general licenses by determining the average price paid in each county during every fiscal year for these licenses. ABC's fee for an original license must be 90% of the average price paid for the same type of license in that county during the previous fiscal year; in no event shall it be less than \$12,000. As a result, the minimum cost for an original on-sale or off-sale general liquor license has increased from \$6,000 to \$12,000; in some counties, the cost will exceed \$40,000. Additionally, the cost of transferring an off-sale general license from one county to another has doubled from \$3,000 to \$6,000; the new minimum fee for an original on-sale general license for seasonal businesses is \$9,000; and, if an application is denied or withdrawn, ABC is authorized to retain 25% of the license fee paid, or not more than \$100.

### LEGISLATION

**AB 8 (Connolly).** Existing law requires that beer kegs clearly display a specified warning. Any commercial establishment or retail distributor which violates that provision is subject to a civil penalty not to exceed \$500. As introduced December 7, this bill would additionally require that every beer keg, as defined, clearly display a registration number.

The existing Alcoholic Beverage Control Act provides that a person may not sell, furnish, or give, or cause to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years; it also provides that, in order to prevent a violation of the prohibition on furnishing alcohol to minors, a licensee may refuse to sell or serve alcoholic beverages to any person who is unable to produce adequate written evidence that he or she is over the age of 21 years. This bill would require under the Alcoholic Beverage Control Act that every person in this state who rents, leases, or sells a beer keg to a consumer, as defined, shall maintain a record of the beer keg registration num-



ber and information identifying the consumer, and would permit a licensee, or his/her agent or employee, in order to prevent a violation of the prohibition on furnishing alcohol to minors, to refuse to rent, lease, or sell a beer keg to a consumer who is unable to produce the specified information and identification. [A. GO]

## LITIGATION

In *American Drug Stores, Inc., v. Stroh*, 10 Cal. App. 4th 1446 (Nov. 13, 1992), the Fourth District Court of Appeal considered whether a liquor licensee, threatened with suspension or revocation of its license, may avoid the statutory limitations on judicial review of ABC disciplinary actions by filing a declaratory relief action in superior court before ABC has acted on the disciplinary action. American Drug Stores, Inc. (American) is the holder of a liquor license from ABC and operates SavOn Drugs, a retail store in El Cajon at which alcoholic beverages are sold. ABC accused American of selling alcoholic beverages to minors in violation of article XX, section 22 of the California Constitution, which prohibits the sale of such beverages to anyone under the age of 21; the alleged sales occurred in October and December of 1990. ABC, in conjunction with local police departments, operates "sting" operations in which it uses minors as decoys to purchase alcoholic beverages from licensees; the alleged sales were made during a sting operation in which minors acted as undercover agents in cooperation with the El Cajon police. As a result of the unlawful sales, American is in jeopardy of suspension or revocation of its license.

American filed a complaint for declaratory and injunctive relief and a motion for a preliminary injunction in superior court, seeking to prevent ABC from imposing any penalties based on the results of the sting operation. American contended that the sting operation violated the constitutional prohibition against selling alcoholic beverages to a minor or purchasing of same by a minor. Claiming that ABC's activity itself violated constitutional principles, American argued that the sting operation should not be permitted to serve as the basis for ABC's disciplinary action, and further contended that ABC should be enjoined from taking disciplinary action based upon sting operations.

ABC demurred to the complaint on the ground that the superior court lacked jurisdiction to entertain the complaint or grant the requested relief; ABC relied upon Business and Professions Code section 23090.5, which provides that only the California Supreme Court and courts of

appeal have jurisdiction to interfere with ABC's performance of its duties. American opposed the demurrer, claiming that the exclusivity provisions of section 23090.5 apply only to actions attacking the validity of an ABC "order, rule, or decision"; American argued that because no order had yet been issued, and because its action sought only a declaration rendering the sting operation invalid, the superior court had jurisdiction.

In response to American's contention that the exclusivity provisions apply only when the challenge is to an ABC "order, rule, or decision," the Fourth District "reject[ed] the notion that jurisdictional limitations can be circumvented by a preemptive lawsuit." The court noted that American is seeking an advance declaration rendering disciplinary action against it void, based on the alleged unconstitutionality of the method by which the evidence was gathered; because the thrust of American's action would disable ABC from taking disciplinary action, the court concluded that such a judgment on its face would violate the proscriptions of section 23090.5 by annulling an order or decision in advance, or at minimum would restrain, enjoin, or interfere with ABC in the performance of its duties. The Fourth District therefore concluded that where a matter is within the purview of ABC, an action seeking a judgment which will interfere with the Department's prospective disciplinary orders is beyond the jurisdiction of the superior court, even though the licensee styles the action as one for injunctive or declaratory relief.

In a related matter, the First District Court of Appeal is currently considering the constitutionality of ABC's use of minor decoys to catch ABC licensees violating the law regarding sales to minors. In *Proviso Corporation v. Alcoholic Beverage Control Appeals Board* and *Lucky Stores v. Alcoholic Beverage Control Appeals Board*, Nos. A058137 and A058534, the First District has consolidated two appeals in which licensees are protesting the suspension of their licenses by arguing—among other things—that ABC's use of underage police agents to purchase alcoholic beverages is unconstitutional and requires dismissal of the charges. [12:4 CRLR 138] The First District's decision is expected to be issued in early 1993.

In another proceeding, Judge D. Lowell Jensen of the U.S. District Court for the Northern District of California ruled on October 28 that federal officials in the Department of the Treasury's Bureau of Alcohol, Tobacco, and Firearms (BATF) acted without cause and exceeded their statutory authority when they imposed a

ban on the import of Black Death Vodka in April. The ruling prevents BATF from canceling the vodka's label approval which it originally received in 1989; loss of label approval would have effectively forced Black Death out of the United States.

BATF claimed that its actions were necessary because the Black Death name, the brand's grinning skull logo, and its slogan, "Drink in Peace," combined to create the misleading impression of Bubonic plague and poison; the Bureau also complained that the label made a mockery of health warnings on the effects of alcohol. However, the court rejected the Bureau's claims, ruling that the action was "arbitrary and capricious" and that the government violated the constitutional rights of the plaintiffs, importer Cabo Distributing Company of South El Monte and Black Death USA.

## BANKING DEPARTMENT

*Superintendent:*

*James E. Gilleran*

*(415) 557-3232*

*Toll-Free Complaint Number:*

*1-800-622-0620*

Pursuant to Financial Code section 99 *Pet seq.*, the State Banking Department (SBD) administers all laws applicable to corporations engaging in the commercial banking or trust business, including the establishment of state banks and trust companies; the establishment, operation, relocation, and discontinuance of various types of offices of these entities; and the establishment, operation, relocation, and discontinuance of various types of offices of foreign banks. The Department is authorized to adopt regulations, which are codified in Chapter 1, Title 10 of the California Code of Regulations (CCR).

The superintendent, the chief officer of the Department, is appointed by and holds office at the pleasure of the Governor. The superintendent approves applications for authority to organize and establish a corporation to engage in the commercial banking or trust business. In acting upon the application, the superintendent must consider:

(1) the character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company;

(2) the need for banking or trust facilities in the proposed community;

(3) the ability of the community to support the proposed bank or trust com-